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# Restructuring across borders

## Slovenia

Corporate restructuring and insolvency procedures | January 2024

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# Contents



# Introduction

A new insolvency law was enacted on 15 January 2008: the Act on Financial Operations, Insolvency Proceedings and Compulsory Dissolution (*Zakon o finančnem poslovanju, postopkih zaradi insolventnosti in prisilnem prenehanju*) (the **Insolvency Act**).

The entering into force of the Insolvency Act resulted in a comprehensive reform of Slovenian insolvency law. Since it entered into force, the Insolvency Act has been amended several times.

Amendments in 2013 widened the restructuring possibilities, implemented new preventive restructuring proceedings, strengthened the position of creditors and employees and reduced the competencies of corporate bodies of insolvent companies.

With the last amendment adopted in the fall of 2023, the EU Directive 2019/1023 on restructuring and insolvency was transposed. This, among others, resulted in a new restructuring proceeding being introduced into the Insolvency Act.

# Bankruptcy proceedings
## *(Stečajni postopek)*

The purpose of bankruptcy proceedings is to realise the debtor's estate (*stečajna masa*) and distribute the proceeds to the creditors where the debtor is insolvent or over-indebted. A bankruptcy petition may be filed with the court by:

– the debtor;

– a personally liable shareholder of the debtor;

– a creditor (who must show that a debt is due with reasonable certainty and show that the debtor is more than two months late with its payment of that debt); or

– the Public Scholarship, Development, Disability and Maintenance Fund of the Republic of Slovenia (*Javni štipendijski, razvojni, invalidski in preživninski sklad Republike Slovenije*) (this Government body can issue a bankruptcy petition based on employee claims, which it must prove with reasonable certainty and show that the debtor is more than two months late with its payments).

The court shall commence the bankruptcy proceedings if the debtor is shown to be insolvent. Insolvency is defined as the long-term inability of the debtor to fulfill all of its existing obligations as they mature. There is no set period for the court to take into account when assessing the debtor's future obligations. However, this condition is assumed to be met if:

– a debtor is more than two months late with payments that in total exceed 20% of the debtor's financial obligations, as stated in the last published annual report;

– the funds on the debtor's bank account do not suffice for the fulfilment of enforcement orders for at least 60 consecutive days or 60 out of 90 days (and such status is continuing on the day before the bankruptcy filing);

– the debtor has no bank account in Slovenia and has not fulfilled its obligations under an enforcement order for more than 60 days;

– the debtor is subject to a confirmed compulsory settlement or simplified compulsory settlement and is, for more than two months, late with:

(i) payment of obligations stemming therefrom for more than two months; or (ii) payment of obligations towards secured creditors, which arose before the opening of the compulsory settlement, even if they are not the subject of the compulsory settlement; or (iii) the implementation of other financial rte

– the debtor is more than two months late in the payment of wages to employees up to the amount of the minimum wage or with the payment of taxes and contributions, which must be paid together with those wages, and such status continues on the day before the filing of an application for commencement of bankruptcy proceedings (evidence to the contrary shall not be allowed).

In addition, insolvency is also defined as the permanent inability of a debtor to fulfil all of its due and payable obligations. This condition is assumed to be met if either:

– the debtor's due and payable obligations exceed its assets (over-indebtedness); or

– the debtor's loss for the current financial year, together with the loss brought forward, exceeds half of the registered capital, and this loss cannot be covered from net profit/reserves.

Where a debtor is insolvent, the management board of the debtor is under a statutory obligation to restructure the debtor or file a petition for the opening of insolvency proceedings within one month after becoming insolvent.

The bankruptcy petition must be filed with the court competent to oversee bankruptcy proceedings in relation to the debtor. The competent court with jurisdiction in relation to bankruptcy proceedings is determined based on the debtor's registered seat. The information concerning the initiation and termination of bankruptcy proceedings is entered into the court register; with further information concerning bankruptcy proceedings (which includes decisions on the opening and closing of bankruptcy proceedings) being published in the insolvency database on the website of the Agency of the Republic of Slovenia for Public Legal Records and Related Services (**AJPES**).

A sole judge conducts bankruptcy proceedings. To administer and realise the debtor's estate under the supervision of the court, the bankruptcy court appoints a receiver (upravitelj).

# Bankruptcy proceedings *(Stečajni postopek)* (cont.)

A sole judge conducts bankruptcy proceedings. To administer and realise the debtor's estate under the supervision of the court, the bankruptcy court appoints a receiver (*upravitelj*). If the creditors require it, the court must also establish a creditors' committee (*upniški odbor*) to assist the receiver. The members of such creditors' committee are nominated by the court or elected by the creditors. They can be appointed from creditors who registered their claims within a prescribed period and have (in total) the highest value of claims against the debtor. A creditor with a right to separate satisfaction of their claim (a type of secured creditor) cannot be appointed as a member of the creditors' committee unless that creditor proves that the security does not suffice to pay the entire claim. The creditors' committee must have an odd number of members and must not have fewer than three (unless the number of creditors is lower) or more than 11 members.

Among other issues, the judge responsible for the conduct of the bankruptcy proceedings shall:

– determine applications for urgent measures which need to be carried out during bankruptcy proceedings;

– approve the estimated costs of the bankruptcy proceedings and the receiver's fees;

– appoint and dismiss the receiver;

– decide on the manner of the sale of the debtor's estate; and

– approve the distribution of the proceeds from the sale of the debtor's estate.

The receiver is authorised by law to act as a legal representative of the debtor and to conduct the debtor's business operations. Nevertheless, the receiver is also obligated to act in the interest of the creditors.

The receiver's main tasks are to:

– assess the size of the debtor's property and assets;

– realise the debtor's property by collecting receivables and selling assets;

– review creditor's claims and prepare the basic list of tested claims in which the receiver either recognises or contests individual claims;

– prepare a draft schedule for the distribution of proceeds to the creditors; and

– distribute any potential proceeds among the creditors.

Moreover, the receiver is obligated to regularly report (every three months) to the court regarding the status of the bankruptcy proceedings (regular reporting), as well as to provide a report on a particular issue of the bankruptcy proceedings upon the request of the court or creditors' committee (the special report).

If a creditors' committee is formed, it shall have, among other rights, the power to:

– demand reports from the receiver on the progress of the bankruptcy proceedings and the state of the insolvent estate and provide comments on these reports;

– conduct an audit of the debtor's accounts and documentation held by the receiver;

– propose that the current receiver be dismissed;

# Bankruptcy proceedings *(Stečajni postopek)* (cont.)

– make submissions to the bankruptcy judge on the steps taken by the receiver to realise the insolvent estate (for example, when the creditors' committee is of the view that the receiver's actions will not provide the best returns for the insolvent estate);

– provide comments on the proposed bankruptcy plan prepared by the receiver; and

– consent to any proposal of the receiver that the debtor continues its business operations.

There are two phases to the bankruptcy proceedings. The first phase (preliminary proceedings) starts with filing a bankruptcy petition with the competent court (*predlog za začetek stečajnega postopka*) by an entitled applicant. The bankruptcy court shall then decide whether the conditions (i.e. the existence of a state of insolvency) for the institution of the bankruptcy proceedings are met. If they are (and, where applicable, the advanced payment for the costs of the proceedings has been paid by the applicant), the bankruptcy court shall issue an order on the commencement of bankruptcy proceedings (*sklep o začetku stečajnega postopka*), which represents the beginning of the second phase (main bankruptcy proceedings).

The above order is published on the website of the AJPES on the same day the court issues it. The legal consequences of the bankruptcy proceedings (such as the creation of the insolvent estate or the limiting of the competencies of the corporate bodies of the bankrupt entity) come into effect at the beginning of the same day.

Creditors' claims (even in relation to debts which are not yet due and payable) need to be registered with the bankruptcy court within three months from the commencement of bankruptcy proceedings. This period runs from the date of the publication of the bankruptcy order on the website of the AJPES. The bankruptcy court shall disregard any claims filed after that date. Accordingly, creditors who fail to file a claim within the above period or whose claims are contested by the receiver (and later on not recognised by the court) may not participate in the distribution of the debtor's estate. One exception to this rule concerns a failure to register a right of separation (a creditor's right to assets that are property of the creditor but in the possession of the debtor) (*izločitvena pravica*). The consequence of such a failure to register is that the receiver can sell the object that does not belong to the debtor, and the holder of the right of separation can claim the purchase price, but only if it registered that monetary claim with the court before the publication of the plan regarding the first general distribution of proceeds of the bankruptcy estate. Further exceptions to this rule concern the filing obligation of creditors with a right of separate satisfaction (*ločitvena pravica*) entitling them to an out-of-court sale of the secured property, who retain such a right also after the commencement of bankruptcy proceedings, as well as creditors, who are beneficiaries of a mortgage or a maximum mortgage, which has been registered in the land book over a real estate owned by the debtor before the initiation of the bankruptcy proceedings.

The receiver proposes the manner of the sale of the debtor's assets to the bankruptcy court, taking into account the opinions of the creditors' committee and any certified appraiser appointed to evaluate the assets. The court's decision on the manner of the sale process shall contain provisions governing the method of sale and transfer of property, the (minimum) price to be paid by purchasers, payment terms, the amount and methods for paying deposits and any payment guarantees required.

Once a final distribution has been made to creditors, a court order will terminate the bankruptcy proceedings. This results in the dissolution of the debtor. The order is published on the website of the AJPES and entered into the court register.

If the value of the debtor's estate is inconsiderable or it does not even cover the costs of the bankruptcy proceedings, the court, upon a proposal of the receiver and having sought the opinion of the creditors' committee, may decide to terminate the bankruptcy proceedings without a distribution to creditors (*končanje stečajnega postopka brez razdelitve upnikom*).

# Compulsory settlement
## *(Postopek prisilne poravnave)*

A compulsory settlement enables an insolvent debtor to perform a financial restructuring and to continue in business. Such proceedings aim to gain a more favourable result for the debtor's creditors when it comes to the repayment of claims than if bankruptcy proceedings had been commenced.

A compulsory settlement may not affect preferential claims, which the debtor must repay in full, regardless of the compulsory settlement being confirmed. Furthermore, the debtor's shareholders may only maintain such a share in the debtor's capital that corresponds to the asset value they would obtain in bankruptcy proceedings.

The amendments to the Insolvency Act in 2013 implemented special rules applicable in compulsory settlement proceedings of small, mid-sized and large companies, which strengthen the rights of creditors, in particular, creditors of financial claims (defined as claims against the debtor, based on loan agreements, bank guarantee agreements or similar transactions, concluded by the debtor with a bank or a financial institution; financial lease agreements or similar transactions, concluded by the debtor with a bank or a financial institution; loan agreements or similar transactions, concluded with any other entities; guarantees or similar transactions assumed by the debtor for financial claims against another person, or derivative financial instruments, issued by the debtor) and foresaw new restructuring possibilities. For example, they allow for compulsory settlement proposals to be limited to unsecured financial claims or be extended to secured claims (in such cases, a transformation of rights to separate satisfaction to joint rights of separation can be proposed as well) and foresee restructuring by way of a spin-off of healthy parts of the debtor's business, which is followed either by liquidation or bankruptcy proceedings of the (remaining parts of the) debtor.

A compulsory settlement may only be concluded outside of bankruptcy proceedings (i.e., before they commence).

Generally speaking, compulsory settlement proceedings are conducted in a manner similar to bankruptcy proceedings. The preliminary proceeding (*uvedba postopka prisilne poravnave*) (the first phase) is initiated by the debtor or by a personally liable shareholder (or, in the case of small, mid-sized and large companies, by creditors in sum of 20% or more of all claims against the debtor as shown in the last published financial statements) filing an application with the court.

# Compulsory settlement
## *(Postopek prisilne poravnave)* (cont.)

During the preliminary proceedings (*uvedba postopka prisilne poravnave*), the debtor can only conclude transactions related to its day-to-day business and must not sell or encumber its assets or take on any liabilities as warrantor/bailer.

The second phase starts when the court issues a decision regarding the commencement of compulsory settlement proceedings (*začetek postopka prisilne poravnave*). The court's decision is published on the website of the AJPES. The legal consequences of the compulsory settlement proceedings come into effect on the date of the publication of the court's order on the above website.

Compulsory settlement proceedings are administered by a judge. When the judge establishes that the conditions for commencing a compulsory settlement are met, he appoints a receiver (*upravitelj*). The powers and duties of the receiver in the compulsory settlement differ from the duties of the receiver in bankruptcy proceedings; the receiver does not have managerial powers, but primarily only supervises the debtor's operations. The receiver is entitled to adequate compensation for their services and any costs incurred in performing those services.

The debtor must file a financial restructuring plan, which must be attached to the initial application for the commencement of the compulsory settlement proceedings. If the creditors have commenced the compulsory settlement proceedings, a financial restructuring plan must be filed within three months (extendable for a further two months) after the filing of the application for the commencement of the compulsory settlement proceedings, whereby both the applying creditors (the debtor is obliged to provide them with any required information, otherwise they can request to be given authorisation to take over the management of the debtor) and the debtor are entitled to prepare such plan.

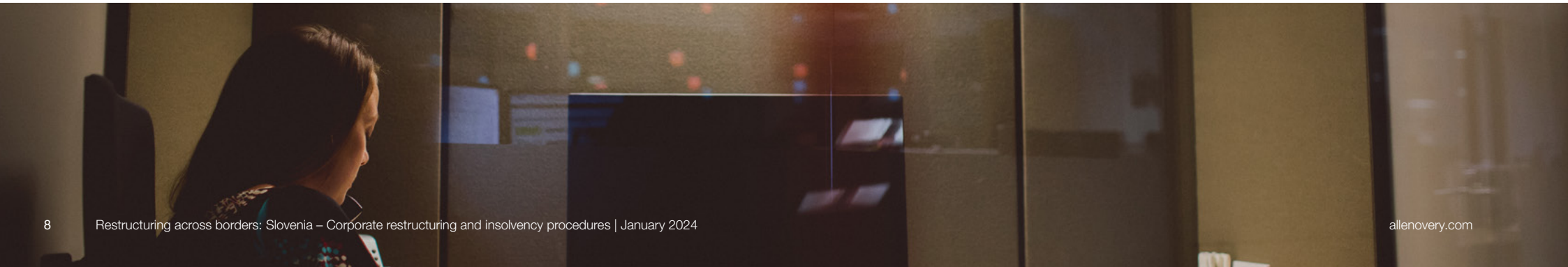
The financial restructuring plan must contain, among other details:

– a compulsory settlement proposal, including a list of unsecured claims and the proposed percentage of their repayment and/or an extension of the terms for repayment, description and the proposed manner of the financial restructuring of secured claims, if such secured claims are subject to financial restructuring, an (alternative) proposal for conversion of claims into equity (in certain cases such a proposal is mandatory), with further details about the conversion ratio and envisaged capital increase;

– a description of any other envisaged measures of the financial restructuring, including the time frame for their completion and evaluation of their effects on eliminating the insolvency; and

– a description of how the debtor will carry out its obligations under the proposed compulsory settlement.

As well as reducing creditors' claims and/or extending their repayment period, a compulsory settlement proposal may include an alternative proposal for a debt to equity swap (*konverzija terjatev v deleže*), provided that the debtor is a limited liability company or a joint stock company. If the accounts of the debtor show losses that cannot be covered by profit, carried-forward profit or reserves and/or the book value of the debtor's assets (as shown in the debtor's financial statements as of the end of the quarter before the filing of the application for commencement of proceedings), is higher than their liquidation value (as shown in the valuation which needs to be attached to the application for the commencement of proceedings), the debtor is obliged to propose to creditors the conversion of their claims into equity.



# Compulsory settlement
## *(Postopek prisilne poravnave)* (cont.)

Furthermore, the Insolvency Act entitles:

– the debtor's management (provided that the debtor has provided for the possibility of a capital increase in the financial restructuring plan) to resolve on a capital increase by new cash consideration in which not only the existing shareholders, but also creditors or even third parties may participate; and

– the creditors' committee to resolve on a capital increase by new cash contribution or by contributions in kind (even if such measures have not been foreseen in the financial restructuring plan).

However, this restructuring possibility, which has been introduced by an amendment to the Insolvency Act, enables a capital increase only with new cash contributions.

The formation of a creditors' committee, composed of a minimum of three and a maximum of 11 creditors, is mandatory. Members of the creditors' committee are selected based on the value of their unsecured claims, with the highest in value being selected. The creditors' committee is entitled to review the debtor's financial status and business activities, request the receiver's removal, and suggest measures necessary to protect the interests of creditors in the compulsory settlement proceedings. In case of a compulsory settlement over a small, mid-sized or large company, which foresees the restructuring of secured claims, a special creditors' committee of secured creditors shall be formed, which shall consist of all secured creditors, save secured creditors, which are affiliated or closely related to the debtor. In cases where the court has to decide on a particular matter based on an opinion or consent of the (unsecured) creditors' committee, it shall also obtain the opinion or consent from the creditors' committee of secured creditors. In some instances, the rights of the creditors' committee of secured creditors (even) prevail over the rights of the (unsecured) creditors' committee (e.g. when both creditors' committees adopt the decision to change the share capital of the debtor or lodge a request for amending the financial restructuring plan).

In general, creditors, who registered their claims with the court within one month from when the decision commencing compulsory settlement proceedings has been published on the website of AJPES, are entitled to vote on the compulsory settlement. However, such claims must be: (i) recognised by the receiver; or (ii) if contested by the creditors/receiver, recognised by the courts as "likely to be valid", either partially or in their entirety.

Creditors with preferential claims do not have voting rights. Secured creditors with a right to separate satisfaction of their claim have voting rights only if they swap their claims into equity or if secured claims are subject to the compulsory settlement as well. Moreover, those secured creditors with a right to separate satisfaction have voting rights, if they agree with the debtor to prolong the maturity of their claim, provided that this is necessary for the implementation of the financial restructuring plan.

The compulsory settlement shall be adopted if creditors holding 60% of all claims by value and holding the right to vote, vote in favour of the plan. If only financial claims are subject to the compulsory settlement, the mentioned 60% majority is calculated based on the financial claims only. If secured claims are subject to the compulsory settlement, in addition to the mentioned 60% majority, the majority of 75% of secured claims is required. If, however, a compulsory settlement, which foresees the restructuring of secured claims, also includes the transformation of the rights to separate satisfaction of individual creditors to joint rights to separate satisfaction, the acceptance of the compulsory settlement in the part related to the transformation requires an 85% majority of the secured creditors; should this majority not be reached, the compulsory settlement is accepted in other points (provided that the required majorities have been reached).

Certain types of claims carry enhanced voting rights. These are as follows: secured claims that were swapped to equity are multiplied by three or, respectively, five (provided that the secured creditor has also participated in the capital increase by new cash contributions); ordinary claims that were swapped to equity are multiplied by two or, respectively, four (provided that the secured creditor has also participated in the capital increase by new cash contributions); and contingent ordinary claims are multiplied by 0.5, other ordinary claims are multiplied by 1. Furthermore, subordinated claims carry diminished voting rights. In contrast, subordinated claims that were swapped to equity shall be multiplied by 0.25 and subordinated claims which were not swapped to equity shall be multiplied by 0.5. The majorities which concern the secured claims shall be calculated taking into consideration the recognised or, as applicable, likely proven secured claim, but in the maximum amount of the appraised value, determined by a certified appraiser, shown in the documentation filed together with the application for commencement of the compulsory settlement proceedings.

# Compulsory settlement
## *(Postopek prisilne poravnave)* (cont.)

If the required majorities cannot be obtained, the court shall terminate the compulsory settlement proceedings and initiate bankruptcy proceedings. If the required majorities are obtained, the court shall confirm the adoption of the compulsory settlement. The compulsory settlement shall be legally effective when the court decision is final.

Generally, an adopted compulsory settlement is legally effective against all claims that existed on the day the compulsory settlement proceeding was commenced. Once the court has confirmed the adoption of the compulsory settlement, the debtor is excused from paying a creditor an amount exceeding the percentage that the debtor is obliged to pay under the confirmed compulsory settlement. The creditor's payment may be deferred per the terms of the compulsory settlement plan. If the debtor does not fulfil its obligations under the compulsory settlement plan, any creditor has the right to recover its claim (as compromised by the compulsory settlement) in an enforcement procedure. The adoption of the compulsory settlement is registered in the court register.

After the compulsory settlement is confirmed and during the term of the compulsory settlement (i.e. until the creditor claims are repaid under the conditions of the compulsory settlement) the debtor is required to report to the court every three months on the performance of the financial restructuring plan. If the debtor does not report to the court, the debtor shall be assumed insolvent, and bankruptcy proceedings may be initiated.

Each participant in the compulsory settlement bears its own costs of the proceedings. The debtor has to pay for the associated costs, which include the fees of the receiver and the experts.

# Compulsory settlement for small businesses
## *(Postopek prisilne poravnave za malo gospodarstvo)*

In light of numerous scandals that have marked simplified compulsory settlement procedures in the past, the amendment to the Insolvency Act in 2023 abolished this procedure and replaced it with so-called special rules for compulsory settlements for small businesses. The purpose of such changes is to increase judicial oversight in these proceedings to safeguard the position of creditors more efficiently as this was done in the past.

The procedure is still available for entities which fulfil the criteria of micro-companies[1] and micro/small sole entrepreneurs.[2]

Furthermore, provisions that otherwise apply for a "regular" compulsory settlement apply also for a compulsory settlement for small businesses, with some exceptions.

Namely, the proposal for the initiation of the proceeding does not have to include an auditor's report and a report by a certified valuer of the value of the business.

However, the debtor must present a declaration that his statement of the company's financial position and business gives a true and fair view of the debtor's financial position. Opposed to the "regular" compulsory settlement, the proceeding cannot be initiated by creditors.

Special provisions relating to a simplified reduction of share capital and provisions on increasing share capital by new cash contributions or in-kind contributions are not applicable as well.

Differently than before, formation of a creditors' committee is now also envisioned as part of the proceeding. However, the possibility of transferring the authorization for managing the debtor`s business to the creditors' committee is excluded. Moreover, the debtor's management does not have to comply with certain additional obligations, which otherwise apply in a "regular" compulsory settlement.

The new procedure does include significantly more safeguards than the previous simplified compulsory settlement procedure, as the creditors can request from the debtor information and business documentation on the basis of which they can verify the report on the debtor's financial situation and business operations. In addition, creditors can object to the initiation of aforementioned proceedings, which if well founded, could lead to a bankruptcy proceeding. Lastly, the problem of fictitious claims, which presented a significant risk before, is generally no longer present, since all claims have to be checked by the court appointed administrator.

[1] A micro company is a company which fulfils the following conditions: (i) average number of employees in a business year does not exceed ten; (ii) net sales revenues do not exceed EUR 700,000; (iii) assets do not exceed EUR 350,000; (iv) company's assets in the last two years have not exceeded EUR 700,000; and (v) the total amount of outstanding obligations does not exceed EUR 700,000.

[2] The criteria for sole entrepreneurs are the following: (i) average number of employees in a business year does not exceed ten; (ii) net sales revenues do not exceed EUR 700,000 and (iii) the total amount of outstanding obligations does not exceed EUR 700,000

# Preventive restructuring proceedings
## *(Postopek preventivnega prestrukturiranja)*

In 2013, a new type of proceedings was introduced, i.e. preventive restructuring proceedings, which are technically not insolvency proceedings but pre-insolvency proceedings, since they are available for selected debtors who are not yet, but are likely to become insolvent within one year. The Insolvency Act assumes that this condition is fulfilled if the opening of proceedings is consented to by creditors holding at least 30% of financial claims. However, this assumption is deemed rebutted if creditors holding in total 30% of financial claims request to stop the proceedings. Preventive restructuring proceedings can be applied for by debtors who fulfil the criteria for small,[3] mid-sized[4] or large companies.[5]

Preventive restructuring proceedings are conducted with a purpose to enable the debtor to implement appropriate measures to restructure its financial obligations and other financial restructuring measures necessary to remedy the causes which may render it insolvent. Only financial obligations may therefore be restructured in preventive restructuring proceedings. The application for opening preventive restructuring proceedings does not have to include any proposed financial restructuring measures. Instead, the proceedings foresee that the debtor concludes a restructuring agreement with the financial creditors after the opening of proceedings. After that, the debtor has to apply for the confirmation of the restructuring agreement by the court within three months (if the debtor is a small or mid-sized company; extendable for two months) or, respectively, five months (if the debtor is a large company; extendable for three months).

With the restructuring agreement, the contractual parties agree on the financial restructuring plan, stipulating the necessary restructuring measures, a time plan for implementing the restructuring measures, possible other conditions, and determining other mutual rights and obligations regarding financial restructuring. A list of financial claims, which has been reviewed and confirmed by an auditor, must be attached to the restructuring agreement. The restructuring agreement must be signed by the debtor and the creditors holding 75% of unsecured financial claims and, if applicable, the creditors holding 75% of secured financial claims. If the restructuring agreement foresees special measures, additional consents/agreements from individual creditors may be necessary. The original restructuring agreement must be deposited with the notary public.

If the agreement provides for the reduction or deferral of the maturity of ordinary financial claims, the same conditions shall apply to all ordinary financial claims. The equal treatment of creditors principle applies also if the agreement determines the deferral of the maturity of secured financial claims or the modification of interest rates used for the principal of the secured financial claim. However, for such cases, the Insolvency Act does not allow for the deferral of secured financial claims to exceed five years. The restructuring agreement further cannot affect financial collateral (established pursuant to the Financial Collateral Act). Exceptions to all of the above are possible if an individual creditor explicitly agrees otherwise.

During preventive restructuring proceedings, no compulsory settlement and/or bankruptcy proceedings may be commenced against the debtor.

Also, pending enforcement actions are stayed, and no new enforcement or securing proceedings may be initiated, if the underlying claim is a financial claim. Moreover, the debtor is deemed not to be in default with the payment of principal amounts deriving from financial claims.

It is not possible to start preventive restructuring proceedings within two years after: (i) prior preventive restructuring proceedings have been concluded; or (ii) the debtor has fulfilled its obligations under a compulsory settlement (unless otherwise agreed by creditors holding at least 75% of all financial claims). Moreover, no preventive restructuring proceedings can be opened if compulsory settlement proceedings have been initiated against the debtor, which have not yet been finally concluded, or if bankruptcy proceedings have been opened against the debtor.

If the court confirms a restructuring agreement, it is effective also vis-à-vis for financial creditors who have not signed it.

[3] A small company is a company which is not a micro company and fulfils two of the following conditions: (i) average number of employees in a business year does not exceed 50; (ii) net sales revenues do not exceed EUR8m; and (iii) assets do not exceed EUR4m.

[4] A mid-sized company is a company which is neither a micro company nor a small company and fulfils at least two of the following criteria: (i) the average number of employees in a financial year does not exceed 250; (ii) the net sales income does not exceed EUR40m; and (iii) the value of assets does not exceed EUR20m.

[5] A large company is a company which is neither a micro company nor a small company nor a medium-sized company.

# Judicial restructuring procedure for preventing imminent insolvency
## *(Postopek sodnega prestrukturiranja zaradi odprave grozeče insolventnosti)*

The judicial restructuring procedure for preventing imminent insolvency (judicial restructuring) was introduced into Slovenian legislation in 2023 with the purpose of transposing Directive (EU) 2019/1023 on restructuring and insolvency. However, the procedure will become available to debtors from 1 January 2025 onwards.

The aim of judicial restructuring is very similar to preventive restructuring, i.e. to enable debtors to carry out financial restructuring measures necessary to remedy the causes of the debtor's impending insolvency (grozeča insolventnost). The latter is a situation that arises if the debtor is likely to become insolvent within a period of one year. Judicial restructuring could be viewed as the next phase of the already initiated (contractual) out-of-court restructuring, which was then not possible due to the absence of consent of a debtor's key creditors.

Opposed to preventive restructuring proceedings that are meant only for small, mid-sized and large companies and allow only for financial claims to be restructured, judicial restructuring may be utilized by all companies and in relation to both financial and operating claims.

Judicial restructuring is carried out mutatis mutandis with provisions applicable to compulsory settlement, with certain exemptions (e.g. the petition does not include a subordinated proposal to begin bankruptcy in case of rejection, etc.). Similarly, the initiation of the judicial procedure results in a standstill of creditor claims, whereby the standstill period is limited to four months. The court may extend this period, but not for more than 12 months in total, where progress in negotiation among creditors and debtor is made.

Creditors can also object to the initiation of judicial restructuring due to a debtor`s failure to provide true, correct or complete information regarding his financial situation or business operations and relevant documentation. If the objection is if well founded, the court initiates a bankruptcy proceeding ex officio.

After the initiation of judicial restructuring, the debtor's operations are limited to daily business and to settlement of liabilities from such activities. If action outside the regular course of business is required (e.g. borrowing new money), the court's prior consent is required. Special attention is given to prevention of further impairment of the debtor's financial position and the equal treatment of creditors. Although the management retains its powers, an administrator is appointed to supervise the debtor's operations (until the judicial restructuring is confirmed) and to manage the formalities (i.e. preparing a list of all claims and conducting the vote).

Unlike in compulsory settlement proceedings, in judicial restructuring proceedings the court confirms the restructuring plan even though it has not been accepted in the class of unsecured creditors but has been accepted in the class of secured creditors and the debtor's shareholders are treated less favourably than unsecured creditors (cross class cram down).

If confirmed, the restructuring plan presented in judicial restructuring shall be legally effective against all claims that existed on the day the proceeding was commenced. However, a court-approved judicial restructuring procedure shall in no case have any effect on the claims of the debtor's employees.

The introduction of judicial restructuring also resulted in the extension of management's responsibilities to the period before insolvency occurs. Company management and other corporate bodies must continuously monitor developments that could jeopardize the company's continued existence in situations where insolvency is imminent but has not yet occurred. In such situations, they must act to avoid unequal treatment of creditors, consider the interests of all stakeholders whose interests may be affected and avoid actions that would jeopardize or reduce the company's assets or otherwise threaten its ability to survive.

# Compulsory liquidation
## *(Postopek prisilne likvidacije)*

Compulsory liquidation is a consequence of certain legally defined reasons for the dissolution of a company. Such proceedings are conducted by the court and are generally regulated by the Insolvency Act.

Compulsory liquidation proceedings must be instituted should certain events prescribed by law occur. In relation to a joint-stock company (*delniška družbah*), the court shall commence compulsory liquidation proceedings if:

– the management board has not been functioning for more than six months;

– a final court ruling establishes that the company never properly existed (i.e. the company was never formed in accordance with company law requirements);

– the court issues a decision dissolving the company; or

– the registered capital falls under the prescribed minimum.

In such cases, the court shall issue a decision on the company's dissolution and commence compulsory liquidation proceedings (*sklep o prisilni likvidaciji*).

Compulsory liquidation proceedings are carried out by the competent court in whose territory the registered office of the legal person is located. Compulsory liquidation proceedings are conducted by a liquidation judge and a liquidator (*upravitelj*).

In compulsory liquidation proceedings, the creditors are not parties to the procedure; therefore, a creditors' committee is not established.

The proceeding is carried out in accordance with general rules on voluntary liquidation if the Insolvency Act does not provide otherwise.

If it is determined (at any time during the compulsory liquidation proceedings) that the conditions for the commencement of bankruptcy have been fulfilled, the liquidator is required to propose the commencement of a bankruptcy procedure immediately. In such a case, the compulsory liquidation is terminated.

# Deletion of a company without liquidation

## *(Izbris iz sodnega registra brez likvidacije)*

A company shall be deleted from the court register *ex officio*, if the company: (i) ceases to operate (and does not have any assets but has fulfilled all of its obligations); or (ii) does not operate at its business address.

The first condition is assumed to be met if the company does not submit an annual report for two consecutive years to the competent authority for publication purposes. The second condition is assumed to be met if the company's business address is an address where the company does not receive its mail or is unknown, the address does not exist, or the company does not have the permission of the owner of the premises to have its registered seat at that address.

The deletion does not affect the right of a creditor of the deleted company to claim repayment from personally liable shareholders of the company or from other shareholders where it is possible to pierce the corporate veil under the relevant rules. A creditor may also claim damages from the management or supervisory board of the deleted company.

# Voluntary liquidation

Voluntary liquidation is carried out by the shareholders and is regulated by the Slovenian Companies Act. There are special liquidation rules depending on the type of legal entity. This fact sheet only covers the voluntary liquidation of joint-stock companies and limited liability companies.

Voluntary liquidation proceedings shall be commenced: (i) where the company must be dissolved as a result of the expiration of the period for which it is established (i.e. when a specific period for the company's existence is stipulated in the articles of incorporation); or (ii) the shareholders' assembly (*skupščina*) passes a resolution to dissolve the company.

The decision to commence a voluntary liquidation (*sklep o likvidaciji*) must be sent to the court for entering in the court register. The voluntary liquidation proceedings only formally commence after the decision has been registered in the court register. After that, the words "in liquidation" (*v likvidaciji*) must be added to and used in conjunction with the company name. The decision of the court to commence the liquidation is published in the business register, operated by AJPES.

Voluntary liquidation proceedings are conducted by one or more liquidators, who are generally appointed from the members of the management board, provided that the Articles of Association, the general assembly or the resolution regarding the commencement of the liquidation do not determine otherwise. Upon petition by the management board or shareholders accounting for one-twentieth of the issued share capital, the court may appoint the liquidator(s) based on justified reasons. A liquidator may be a legal entity or an individual and may be removed at any time, without explanation, by the body that appointed them. With the authorisation of the shareholders' assembly, a liquidator may continue the company's business by entering into new contracts.

If the liquidator, based on notified claims, establishes that there are insufficient funds in the company's estate to fully satisfy the claims of all creditors (inclusive of any statutory interest payable), they must immediately stop the voluntary liquidation and initiate bankruptcy proceedings.

During the voluntary liquidation proceedings, shareholders may present their claims arising from legal transactions with the company. After the company's debts have been satisfied, the remaining estate shall be distributed amongst the shareholders in proportion to their shares. Any unpaid shares must be paid prior to distribution. The company's estate must not be distributed amongst shareholders before six months has elapsed from the publication of the decision to commence voluntary liquidation proceedings in the court register.

After the final distribution, the liquidator applies to the court that the company is deleted from the court register.

# Dissolution of a company by a simplified procedure

A company may be dissolved without going into liquidation if all shareholders propose its deletion from the commercial register to the commercial registrar. Such a proposal must be made to the commercial register and include a resolution on the dissolution by a simplified procedure, a declaration by all shareholders that all of the company's liabilities have been settled and a declaration that the shareholders are assuming the liability to pay any potential outstanding liabilities of the company. Such a declaration must be notarised. If the company is dissolved, the shareholders shall be liable for any outstanding claims and creditors may pursue such claims within two years of the announcement of the deletion of the company from the court register.

# European Insolvency Regulation

The EU Regulation on Insolvency Proceedings 2015 (Regulation (EU) 2015/848) (the **Recast Regulation**) applies to all proceedings opened on or after 26 June 2017. Its predecessor, the EC Regulation on Insolvency Proceedings 2000 (Regulation (EC) 1346/2000) (the **Original Regulation**) continues to apply to all proceedings opened before 26 June 2017. One of the key changes in the Recast Regulation is that it brings into scope certain pre-insolvency "rescue" proceedings and these are now listed alongside the traditional insolvency procedures in Annex A to the Recast Regulation. The Recast Regulation retains the split between main and secondary/territorial proceedings, but secondary proceedings are no longer restricted to a separate list of winding up proceedings – secondary proceedings can now be any of those listed in Annex A. By contrast, the Original Regulation listed main proceedings in Annex A and secondary proceedings (which were confined to terminal proceedings) in Annex B.

Of the above restructuring and insolvency regimes, bankruptcy proceedings (*stečajni postopki*) and compulsory settlement (*postopek prisilne poravnave*) were available as main proceedings under the Original Regulation.

Bankruptcy proceedings (*stečajni postopki*) were also available as secondary proceedings.

Under the Recast Regulation, each of the following proceedings are listed in Annex A: preventive restructuring procedures (*postopek preverntivnega prestrukturiranja*); compulsory settlement proceedings (*postopek prisilne poravnave*); simplified compulsory settlement proceedings (*postopek poenostavljene prisilne poravnave*); and bankruptcy proceedings (*stecajni postopek*).

# Key contacts

If you require advice on any of the matters raised in this document, please contact any of our partners or your usual contact at Allen & Overy, or email rab@allenovery.com

This fact sheet is based on an extract from the Slovenian chapter written by Šelih & partnerji, o.p., d.o.o. Any queries under Slovenian law may be addressed to the key contacts listed below:

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# Further information

Developed by Allen & Overy's market-leading Global Restructuring Group, "**Restructuring Across Borders**" is a free and easy-to-use website that provides information and guidance on all key practical aspects of restructuring and insolvency in Europe, the Middle East, Asia and the U.S.

To access this resource, please **click here**.

For more information, please contact:

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